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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GLORIA ORIG,

Plaintiff,

v.

SUN LIFE ASSURANCE COMPANY OF
CANADA.,

Defendant.

) 1:08-cv-1603 AWI GSA

) SCHEDULING ORDER (Fed. R. Civ. P. 16)

) Discovery Deadlines:

) Non-Expert Discovery: Aug. 28, 2009

) Expert Disclosure: August 28, 2009

) Supp. Expert Disclosure:

) Sept. 11, 2009

) Expert Discovery: Sept. 25, 2009

) Motion Deadlines:

) Non-Dispositive:

) Filing: November 9, 2009

) Dispositive:

) Filing: December 18, 2009

) Pre-Trial Conference:

) February 4, 2010 at 8:30 a.m.

) Courtroom 2 (AWI), 8th Floor

) Trial: April 8, 2010 at 8:30 a.m.

) Courtroom 2 (AWI), 8th Floor

) Jury Trial - 8 days

I. Date of Scheduling Conference

January 6, 2009

II. Appearances of Counsel

Lisa Martinez appeared on behalf of Plaintiff Gloria Orig. Dan McGuire appeared on

1 behalf of Defendant Sun Life Assurance Company of Canada.

2 **III. Case Synopsis**

3 Plaintiff Gloria Orig was employed at the Tulare District Hospital as a phlebotomist/lab
4 technician. As such, she was insured by a group policy of long-term disability insurance issued
5 to her employer by Sun Life. She submitted a disability claim alleging an inability to work
6 beginning on January 25, 2006, by reason of a number of conditions including dizziness, and
7 chest, back and neck pain. Following its claims investigation, Sun Life determined that Plaintiff
8 did not satisfy the definition of total disability under the terms of the policy, and her claim was
9 denied.

10 Plaintiff claims that Sun Life acted unreasonably in the processing and handling of her
11 claim, and that she is and was totally disabled within the terms of the plan. Defendant contends
12 that the claims handling was reasonable, and the decision to deny Plaintiff's claim for benefits
13 was correct.

14 **IV. Legal Issues**

15 _____ The primary legal issue is whether Plaintiff qualifies for benefits under the terms of the
16 disability policy. Plaintiff also alleges that Sun Life breached the covenant of good faith and fair
17 dealing by acting unreasonably in the processing of her claim. Defendant takes the position that
18 there can be no liability for "bad faith" or punitive damages because Plaintiff was not entitled to
19 contract benefits, and even if she were entitled to benefits, a genuine issue of liability exists, and
20 the bad faith and punitive claims must therefore be dismissed. Plaintiff contends that this
21 "genuine issue doctrine" is inapplicable to this case under the present facts.

22 **V. Relief Sought**

23 Plaintiff claims past and present value of future disability benefits together with
24 emotional distress damages, punitive damages, and attorneys' fees and costs.
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1 Defendant contends that Plaintiff is entitled to no damage award in this case.

2 **VI. Anticipated Amendments**

3 The parties do not anticipate any motions to add other parties or transfer venue.

4 **VII. Consent to the Magistrate Judge**

5 Pursuant to 28 U.S.C. § 636(c), the parties have not consented to conduct all further
6 proceedings in this case, including trial, before the Honorable Gary S. Austin, U.S. Magistrate
7 Judge.

8 **VIII. Discovery Plan and Cut-Off Date**

9 The parties shall exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1).
10 The parties have reported that the initial disclosures have been, or will be completed shortly after
11 the scheduling conference. The parties are ordered to complete all discovery pertaining to non-
12 experts on or before **August 28, 2009**. The parties also shall disclose all experts on or before
13 **August 28, 2009**. All supplemental expert disclosures shall be made on or before **September**
14 **11, 2009**. The written designation of experts **shall be made pursuant to Fed. R. Civ. P. Rule**
15 **26(a)(2), (A) and (B) and shall include all information required thereunder.** Failure to
16 designate experts in compliance with this order may result in the Court excluding the testimony
17 or other evidence offered through such experts that are not disclosed pursuant to this order.

18 The parties are directed to complete all expert discovery on or before **September 25,**
19 **2009**. The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to
20 experts and their opinions. Experts must be fully prepared to be examined on all subjects and
21 opinions included in the designation. Failure to comply will result in the imposition of sanctions,
22 which may include striking the expert designation and preclusion of expert testimony.

23 **IX. Pre-Trial Motion Schedule**

24 All Non-Dispositive Pre-Trial Motions, including any discovery motions, shall be filed no
25 later than **November 9, 2009**. In scheduling such motions, the parties shall comply with **Local**
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1 **Rules 78-230 and 56-260. Counsel must comply with Local Rule 37-251 with respect to**
2 **discovery disputes or the motion will be denied without prejudice and dropped from**
3 **calendar.**

4 In scheduling such motions, the Magistrate Judge may grant applications for an order
5 shortening time pursuant to Local Rule 6-142(d). However, if a party does not obtain an order
6 shortening time, the notice of motion *must* comply with Local Rule 37-251.

7 Counsel or pro se parties may appear and argue non-dispositive motions by telephone,
8 providing a written request to so appear is made to the Magistrate Judge's Courtroom Clerk no
9 later than five (5) court days before the noticed hearing date. In the event that more than one
10 party requests to appear by telephone then it shall be the obligation of the moving part(ies) to
11 arrange and originate a conference call to the court.

12 All Dispositive Pre-Trial Motions shall be filed no later than **December 18, 2009**, and
13 heard in Courtroom 2 before the Honorable Anthony W. Ishii, United States District Court Judge.
14 In scheduling such motions, the parties shall comply with **Local Rules 78-230 and 56-260.**

15 **X. Pre-Trial Conference Date**

16 The pre-trial conference will be held on **February 4, 2010**, at 8:30 a.m. in Courtroom 2
17 before the Honorable Anthony W. Ishii.

18 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 16-**
19 **281(a)(2).** The parties are further directed to submit a digital copy of their pretrial statement in
20 Word Perfect X3¹ format, directly to Judge Ishii's chambers by emailing it to
21 awiorders@caed.uscourts.gov.
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25 _____
26 ¹ If WordPerfect X3 is not available to the parties then the latest version of WordPerfect
27 or any other word processing program in general use for IBM compatible personal computers is
28 acceptable.

1 The parties' attention is directed to **Rules 16-281 and 16-282 of the Local Rules** of
2 Practice for the Eastern District of California, as to the obligations of counsel in preparing for the
3 pre-trial conference. The Court will insist upon strict compliance with those rules.

4 **XI. Trial Date**

5 The trial will be held on **April 8, 2010, at 8:30 a.m.** in Courtroom 2 before the
6 Honorable Anthony W. Ishii, United States District Court Judge.

- 7 A. The parties have requested a jury trial.
8 B. Parties' Estimate of Trial Time: 8 days.
9 C. Parties' attention is directed to Local Rules of Practice for the Eastern
10 District of California, Rule 16-285, for preparation of trial briefs.

11 **XII. Settlement Conference**

12 The parties have indicated that they will likely participate in mediation and will contact
13 the court if a settlement conference is requested. In the event that a settlement conference is
14 requested in the future, unless otherwise permitted in advance by the Court, **the attorneys who**
15 **will try the case** shall appear at the Settlement Conference **with the parties** and the person or
16 persons having **full authority** to negotiate and settle the case **on any terms**² at the conference.

17 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

18 At least five (5) court days prior to the Settlement Conference the parties shall submit,
19 directly to the Magistrate Judge's chambers by email to gsaorders@caed.uscourts.gov, a
20 Confidential Settlement Conference Statement. The statement **should not be filed** with the
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23 ² Insurance carriers, business organizations, and governmental bodies or agencies whose
24 settlement agreements are subject to approval by legislative bodies, executive committees, boards
25 of directors or the like shall be represented by a person or persons who occupy high executive
26 positions in the party organization and who will be directly involved in the process of approval of
27 any settlement offers or agreements. To the extent possible, the representative shall have the
28 authority, if he or she deems it appropriate, to settle the action on terms consistent with the
opposing party's most recent demand.

1 Clerk of the Court **nor served on any other party**, although the parties may file a Notice of
2 Lodging of Settlement Conference Statement. Each statement shall be clearly marked
3 "confidential" with the date and time of the Settlement Conference indicated prominently
4 thereon. The parties are urged to request the return of their statements if settlement is not
5 achieved and if such a request is not made the Court will dispose of the statement.

6 The Confidential Settlement Conference Statement shall include the following:

7 A. A brief statement of the facts of the case.

8 B. A brief statement of the claims and defenses, i.e., statutory or other grounds
9 upon which the claims are founded; a forthright evaluation of the parties' likelihood of prevailing
10 on the claims and defenses; and a description of the major issues in dispute.

11 C. A summary of the proceedings to date.

12 D. An estimate of the cost and time to be expended for further discovery, pretrial
13 and trial.

14 E. The relief sought.

15 F. The party's position on settlement, including present demands and offers and a
16 history of past settlement discussions, offers and demands.

17 Should the parties desire an additional settlement conference, they will jointly request one
18 of the court, and one will be arranged. In making such request, the parties are directed to notify
19 the court as to whether or not they desire the undersigned to conduct the settlement conference or
20 to arrange for one before another judicial officer.

21 **XIII. Request for Bifurcation**

22 No bifurcation has been requested.

23 **XIV. Related Matters Pending**

24 There is no related litigation.

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1 **XV. Compliance with Federal Procedure**

2 The parties are expected to familiarize themselves with the Federal Rules of Civil
3 Procedure and the Local Rules of Practice of the Eastern District of California, and to keep
4 abreast of any amendments thereto. The Court must insist upon compliance with these Rules if it
5 is to efficiently handle its increasing case load and sanctions will be imposed for failure to follow
6 the Rules as provided in both the Federal Rules of Civil Procedure and the Local Rules of
7 Practice for the Eastern District of California.

8 **XIV. Effect of this Order**

9 The foregoing order represents the best estimate of the Court and the parties as to the
10 agenda most suitable to dispose of this case. The trial date reserved is specifically reserved for
11 this case. If the parties determine at any time that the schedule outlined in this order cannot be
12 met, counsel are ordered to notify the Court immediately of that fact so that adjustments may be
13 made, either by stipulation or by subsequent status conference.

14 Stipulations extending the deadlines contained herein will not be considered unless they
15 are accompanied by affidavits or declarations, and where appropriate attached exhibits, which
16 establish good cause for granting the relief requested.

17 Failure to comply with this order may result in the imposition of sanctions.

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20 IT IS SO ORDERED.

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22 Dated: January 9, 2009

/s/ Gary S. Austin

23 UNITED STATES MAGISTRATE JUDGE
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